Exposing the Vague Nature of "Greenwashing" Allegations in the United States

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In the United States, allegations of 'greenwashing' are as vague as the most general 'eco-friendly' marketing claims. Often plaintiffs cannot pin down exactly why a marketer's claims are deceptive. Instead, they complain that the underlying product, its manufacturing, or supply chain is a net-negative force to the environment. Any claim about how the company has improved its manufacturing process or supply chain to reduce the use of resources or energy, or is turning to renewable or recyclable sources, is simply a faade - a coat of green paint on an otherwise standard industrial production process.

When it comes to actual court cases involving 'greenwashing,' it is not always as easy to paint that dark, nefarious picture in a manner that will convince a judge that consumers are actually being misled or deceived. 'Greenwashing' is most dangerous for a marketer when it is engaged in the use of general environmental marketing terms. Words and phrases like 'sustainable,' 'Eco-friendly,' and 'Environmentally Conscious' leave the marketer open to a vast array of reasonable takeaways. It's like you actually are taking a can of 'green' paint and tossing the pigment against the 'wall' of your brand. You figuratively are 'washing' your brand with 'greenness.' Brands are less vulnerable when they focus on a particular action that they take in their manufacturing process or supply chain if they can show a reduction in resources (e.g., water, energy) or a reduction in carbon emissions. Allegations of 'greenwashing' are less likely to survive a motion to dismiss if the underlying environmental marketing claims are specific, if they define the basis for the reduction or comparison, and if they provide details about how the reduction or savings is calculated and verified.

General environmental marketing claims should be avoided. The Federal Trade Commission has made that clear in its 'Green Guides' - those guides are currently being updated. Consumers can reasonably interpret such general environmental marketing claims in myriad ways. Because a marketer is responsible for all reasonable interpretations of claims that it makes, general 'green' claims are an easy target for regulators as well as private plaintiffs. Self-regulatory bodies in the U.S. such as the National Advertising Division have similarly adopted this approach in discouraging the use of general environmental marketing claims. As a matter of law, the coined word 'greenwashing' does not amount to much on its own; however, use of general environmental marketing claims is about as close as one can come to creating the effect of covering one's brand with a vague, ill-defined aura of environmental benefit, which benefits no one, and certainly not the environment.

In today's world, 'greenwashing' is used to name and shame companies that talk the talk on sustainability but don't walk it, and it's something that affects giant corporations just as much as the little guys.

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